

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Industralease Automated & Scientific Equipment Corp. :
: :
for Redetermination of a Deficiency or a Revision of :
a Determination or a Refund of Corporation Franchise :
Tax under Article 9A of the Tax Law for the Fiscal :
Years Ended 2/29/76 & 2/28/77. :

AFFIDAVIT OF MAILING

State of New York
County of Albany

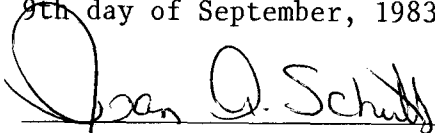
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 9th day of September, 1983, she served the within notice of Decision by certified mail upon Industralease Automated & Scientific Equipment Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Industralease Automated & Scientific Equipment Corp.
Att: Theodore J. Cohen
3000 Marcus Ave.
Lake Success, NY 11040


and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of September, 1983.



AUTHORIZED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

September 9, 1983

Industralease Automated & Scientific Equipment Corp.
Att: Theodore J. Cohen
3000 Marcus Ave.
Lake Success, NY 11040

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9 State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
INDUSTRALEASE AUTOMATED &	:	DECISION
SCIENTIFIC EQUIPMENT CORP.	:	
	:	
for Redetermination of a Deficiency or for	:	
Refund of Corporation Franchise Tax under	:	
Article 9-A of the Tax Law for the Fiscal Years	:	
Ended February 29, 1976 and February 28, 1977.	:	

Petitioner, Industralease Automated & Scientific Equipment Corp., Attn: Theodore J. Cohen, 3000 Marcus Avenue, Lake Success, New York 11040, filed a petition for redetermination of a deficiency or for refund of corporation franchise tax under Article 9-A of the Tax Law for the fiscal years ended February 29, 1976 and February 28, 1977 (File No. 28480).

A formal hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on March 7, 1983 at 1:40 P.M., with all documents to be submitted by April 11, 1983. Petitioner appeared by its Financial Vice President and General Counsel, Theodore J. Cohen, Esq., and by its Vice President and Controller Stanley Newman. The Audit Division appeared by John P. Dugan, Esq. (William Fox, Esq., of counsel).

ISSUES

I. Whether the Audit Division properly required the petitioner to add back interest expense deducted in the computation of entire net income as interest paid to stockholders.

II. Whether liabilities deducted by petitioner in computing total capital were current liabilities for New York State franchise tax purposes.

III. Whether petitioner maintained a regular place of business outside of New York so as to be entitled to allocate its business income and capital.

FINDINGS OF FACT

1. On November 9, 1979, the Audit Division issued to petitioner, Industrial Automated & Scientific Equipment Corp., two notices of deficiency asserting additional tax due in the amount of \$4,028.00 for the fiscal year ended February 29, 1976 and \$4,678.00 for the fiscal year ended February 28, 1977, plus interest for each year.

2. Attached to each of the above notices of deficiency was a Statement of Audit Adjustment, also dated November 9, 1979, providing an explanation of the asserted deficiencies as follows:

"[f]ailure to reply to our correspondence of 9/12/79 requesting data as to interest paid on indebtedness owed stockholders, claim for business allocation, and current liabilities deducted in computation of capital."

3. The deficiencies herein were issued as estimated deficiencies computed on the basis of petitioner's New York State Corporation Franchise Tax Reports (Forms CT-3) as (timely) filed by petitioner for each of the fiscal years at issue. Petitioner's representative noted that the dollar amounts of the deficiencies, as computed, are not at issue, but rather it is the basis upon which such computations are premised that petitioner challenges.

4. Petitioner was incorporated under the laws of New York State on December 1, 1967 and began doing business on the same date. Petitioner is engaged in the business of leasing equipment (tangible personal property such as hospital equipment, furniture and fixtures, etc.). In essence, petitioner provides a method of financing for business and commercial users of various types of equipment.

5. The method by which petitioner conducts its business is as follows:

a) a broker or other business organization seeking to lease or acquire equipment contacts petitioner and describes in detail the specific equipment needed;

b) petitioner thereafter evaluates the potential lessee's credit and, assuming credit worthiness, sets the terms of and enters into a lease agreement for the equipment;

c) petitioner then issues its purchase order for the equipment specified, and also applies to a bank for a loan covering the amount of the purchase order;

d) the equipment is delivered directly to the lessee and, after satisfactory delivery and quality of the equipment is established, petitioner pays (or causes the bank to pay) the vendor;

e) petitioner retains ownership of the equipment and claims depreciation expense on it, while the lessee uses the equipment and makes monthly payments to petitioner during the term of the lease (the leases vary in length from 12 to 84 months);

f) petitioner, in turn, repays its loan(s) to the bank(s).

6. Petitioner is a wholly-owned subsidiary of Industralease Corporation. Petitioner incurs interest expense on its loans from banks and financial institutions, and introduced copies of bank memoranda in support of all interest expense claimed as a deduction on its tax reports. No interest was paid by petitioner to its stockholder parent during the fiscal years at issue.

7. Petitioner conducts its business in twenty-one different states and also in Washington, D.C., and in nine of these jurisdictions (not individually specified) maintains registered agents who accept mail and service of (legal)

process on petitioner. Petitioner pays these agents a fee for such services. The agents rent office space, and petitioner is not liable for the rent on such space nor does petitioner otherwise maintain any office space for itself (or for its registered agents) in these other jurisdictions. These agents operate as independent contractors and do not perform services solely for petitioner.

8. Petitioner had no employees stationed outside of New York, although on occasion an employee would travel outside of New York in order to consummate a transaction.

9. Petitioner does not maintain warehouse space anywhere for the equipment it owns, nor does it maintain an inventory of equipment. At the end of each lease term petitioner has, under the contracts it uses, the right to demand that the lessee ship the equipment anywhere in the United States as the petitioner may direct. Petitioner thus, at its option, can direct the lessee to ship the equipment to a new lessee or to a purchaser of the (used) equipment, or as often happens, can use the shipment clause as an inducement to cause the lessee to opt for purchase of the equipment at the conclusion of the lease term.

10. Petitioner asserts that the presence of its property leased to customers in these other jurisdictions, together with the maintenance of agents as described, entitles petitioner to allocate its income within and without New York on the basis of a business allocation percentage. Petitioner notes that it files tax returns in several of the other jurisdictions in which it leases equipment.

11. Petitioner conceded at the hearing that a portion of the current liabilities reported on its Forms CT-3, specifically in the amounts of \$719,650.00 for fiscal year 1976 and \$515,783.00 for fiscal year 1977, were properly disallowed by the Audit Division inasmuch as such amounts were based on notes

payable by petitioner having an original maturity date of later than one year after such obligations were incurred.

CONCLUSIONS OF LAW

A. That none of the interest expense claimed by petitioner on its franchise tax reports during the fiscal years at issue was paid on indebtedness owed to its parent and sole stockholder, and thus the Audit Division improperly disallowed petitioner's deductions for said interest expense.

B. That petitioner has conceded and does not contest the Audit Division's disallowance of a portion of current liabilities as detailed in Finding of Fact "11".

C. That equipment owned by petitioner and located outside of New York by virtue of its being leased for use to customers located outside of New York does not provide a sufficient basis to entitle petitioner to an allocation of its income within and without New York (Clairmont Mills, Inc. v. State Tax Commission, 11 A.D.2d 368; Matter of Micro Computer Corporation, State Tax Comm., August 16, 1977). Furthermore, the maintenance of registered agents in other jurisdictions to accept service of process on petitioner is not considered the maintenance of an office constituting a regular place of business in such other jurisdictions. Accordingly, the Audit Division's disallowance of petitioner's claimed business allocation percentage was proper.


D. That the petition of Industralease Automated & Scientific Equipment Corp. is granted to the extent indicated in Conclusion of Law "A", but is in all other respects denied. The Audit Division is directed to recompute the notices of deficiency dated November 9, 1979 in accordance herewith, and such

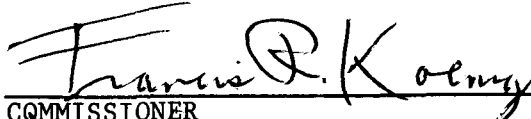
notices as recomputed, together with such interest as may be lawfully owing,
are sustained.


DATED: Albany, New York

STATE TAX COMMISSION

SEP 09 1983


PRESIDENT


COMMISSIONER


COMMISSIONER